***THE HON'BLE MS. JUSTICE G.ROHINI**

+WRIT PETITION No.21745 of 2006

% 30/10/2006

Norman Swaroop Issac .. Petitioner

Vs.

$ 1. State Bank of India, rep. by the General
Manager (Network-1), Local Head Office,
Hyderabad and another. .. Respondents

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> Head Note

! Counsel for the petitioner : Sri K.R.K.V. Prasad

^ Counsel for the respondents: Sri K.Srinivasa Murthy
Cases Referred :

[1] AIR 1978 SUPREME COURT 597

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21745 OF 2006

DATED: 30TH OCTOBER, 2006.

Between :

Norman Swaroop Issac .. Petitioner

And

1. State Bank of India, rep. by the General Manager (Network-1), Local Head Office, Hyderabad and another. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21745 OF 2006

ORDER :

The petitioner is an employee of State Bank of India. While working as Middle Manager Grade Service-III in the 2nd respondent branch, he was placed under suspension w.e.f. 16-11-2005 under Rule 68 (A) (1) of State Bank of India Officers' Service Rules pending disciplinary proceedings initiated against him on the allegation of involvement in a major fraud of about Rs.6 crores. It is also not in dispute that the alleged fraud is being investigated by the Central Bureau of Investigation (CBI) which is still pending.

It is pleaded by the petitioner that on 4-11-2005 the Deputy General Manager, Zonal Office, Hyderabad had visited the petitioner's house along with Assistant General Manager-II, Zonal Office, Hyderabad and asked him to hand over his passport bearing No.B0283300 stating that the same would be returned as and when needed by him. Accordingly, the petitioner handed over the passport to him which is kept in the custody of the 2nd respondent. While so, the petitioner who is a qualified coach of Basketball and an International Referee has been nominated by Basketball Federation of India to

attend Basketball Conference Examination scheduled to be held at Oman, Muscat from 06-11-2006 to 10-11-2006. For the said purpose, the petitioner was advised to send his passport for stamping of visa. Pursuant thereto, the petitioner made a representation dated 22-9-2006 requesting the respondents to return his passport and also permit him to leave the country from 4-11-2006 to 12-11-2006. Alleging that the said request has not been considered by the respondents, this writ petition is filed seeking a declaration that the action of the respondents in withholding the Indian Passport of the petitioner and in not granting permission to leave India is arbitrary and illegal.

A counter-affidavit has been filed on behalf of the respondents stating that the CBI had specifically instructed the respondent Bank not to return the passport of the petitioner and to hand over the same to the CBI as the same is required for the purpose of investigation which is in progress. That apart, the CBI had also instructed the respondent Bank to instruct the petitioner and one V.V.V. Rami Reddy to appear before the CBI on 16-10-2006 and 17-10-2006 for the purpose of investigation.

I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondents.

The learned Counsel for the petitioner while placing reliance upon a decision of the Supreme Court in MANEKA GANDHI v. UNION OF INDIA[1] contended that the action of the respondents in withholding the passport of the petitioner is arbitrary and illegal and violative of the fundamental rights guaranteed under Article 21 of the Constitution of India. It is also contended that the respondent Bank has no authority in law to retain the passport and thus the impugned action being without jurisdiction is liable to be declared as arbitrary and illegal.

The learned Counsel appearing for the respondents contended that since the petitioner is involved in a major fraud involving Rs.6

crores and apart from the investigation by CBI, the departmental enquiry is also in progress, it is not advisable to allow the petitioner to leave the country. The learned Counsel has also placed before this Court a letter dated 10-10-2006 addressed by the Additional Superintendent of Police, Central Bureau of Investigation, Bangalore, in which the 1st respondent was requested not to release the passport of the petitioner pending investigation of the case.

As noted above, the fact that the passport of the petitioner was handed over to the officials of the 1st respondent Bank as required by them and the same remained in the custody of the 2nd respondent as on today is not in dispute.

Though it is true that the petitioner is involved in a case of major fraud in connection with which the disciplinary proceedings are pending against him, the respondents could not point out any provision either under the Service Rules or under the Passports Act, 1967 empowering the respondents/employer to seize/withhold the passport of an employee on any allegation whatsoever.

However, the learned Counsel for the respondents sought to justify the impugned action on the ground that the respondents were directed by the CBI to withhold the passport.

The learned Counsel contended that the Additional Superintendent of Police, CBI, who is an officer of police above the rank of Sub-Inspector is competent to search and seize any passport under Section 14 of the Passports Act, 1967 and since admittedly the investigation by CBI is in progress the respondents are bound to hand over the passport to the CBI as required in their letter dated 10-10-2006.

Section 14 of the Passports Act, 1967 which provides for power of search and seizure may be extracted hereunder :

> ***14. Power of search and seizure :--*** *(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any officer of*

police or emigration officer not below the rank of a sub-inspector may search any place and seize and passport or travel document from any person against whom a reasonable suspicion exists that he has committed ***any offence punishable under Section 12****.*

(2) .. … …. ….. ….. .. …"

A bare perusal of the above provision shows that the officers mentioned thereunder are empowered to search and seize the passport or travel document from any person against whom a reasonable suspicion exists that he has committed any offence under Section 12 of the Passports Act, 1967. Thus, it is clear that the said power is available even to the officers mentioned thereunder only in respect of the offences under Section 12 of the Passports Act, 1967, but not other offences.

In this connection, it is necessary to extract Section 12 of the Passports Act, 1967.

12. Offences and penalties :-- *(1) Whoever –*

(a) contravenes the provisions of Section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1A) Whoever, not being a citizen of India,--

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under sub-section (1) or sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence."

As can be seen, Section 12 of the Passports Act, 1967 deals only with the offences relating to the passports and travel documents such as furnishing false information or altering the entries made in the passport or failure to produce the passport for inspection when called upon to do so by the prescribed authority and such other matters relating thereto.

It is not the case of the respondents that the petitioner had committed any of the offences enumerated under Section 12 of the Passports Act, 1967. Hence, even assuming that the Additional Superintendent of Police, CBI, is competent to seize any passport and therefore the respondents who are in possession of the petitioner's passport as on today are bound to comply with the direction to hand over the petitioner's passport to the CBI, the impugned action of withholding petitioner's passport is beyond the power conferred under Section 14 of the Passports Act, 1967.

It is relevant to note that when the holder of a passport or a travel document is involved in a criminal case or is convicted by the Court in India for any offence involving moral turpitude and sentenced to imprisonment or where the proceedings in respect of an offence alleged to have been committed by the holder of the passport are pending before a Criminal Court in India, under Section 10 (1) of the Passports Act, 1967, the Passport Authority is competent to direct the holder of the passport to deliver the passport or travel document and the holder of the passport is bound to comply with such direction. Under Section 10 of the Passports Act, 1967, the Passport Authority is also empowered to vary or impound or revoke the passport on the grounds mentioned thereunder following due process of law. That apart, Section 10-A of the Passports Act, 1967 empowers the Central Government and the designated officers under the Act to suspend with immediate effect any passport or to pass such other appropriate order which may have the effect of rendering any passport invalid in the circumstances mentioned thereunder.

It is always open to the respondents or the CBI to take the necessary steps for withholding the passport of the petitioner in the manner provided under Section 10 or Section 10-A of the Passports Act, 1967, if the circumstances so warrant.

Nothing has been placed before this Court to show that any such proceedings have been initiated against the petitioner. Admittedly, the passport was taken away by the officials of the respondent Bank in the month of November, 2005 and as on today it continues to be in the custody of the respondents only.

May be that, the CBI directed the respondents to hand over the said passport to it on the ground that pending the investigation if the petitioner leaves the country it would hinder the investigation.

However, as noted above, even the CBI is not competent to exercise such power to seize or withhold the petitioner's passport since seizure under Section 14 of the Passports Act, 1967 is

permissible only where reasonable suspicion exists that the holder of the passport had committed an offence under Section 12 of the Act i.e., an offence relating to passport or travel document. In case the respondent Bank or the CBI is of the opinion that the petitioner should not be allowed to leave the country in the public interest or for any other justifiable ground, they ought to have taken appropriate steps as expressed above, but withholding of the petitioner's passport either by the respondents or CBI, either on the ground of pendency of the disciplinary proceedings or on the ground of pendency of investigation by the CBI into the alleged fraud is without jurisdiction and illegal.

For the aforesaid reasons, the Writ Petition is allowed with a direction to the respondents to hand over the passport to the petitioner forthwith. No costs.

G. ROHINI, J.

Dt. 30-10-2006
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[1] AIR 1978 SUPREME COURT 597